LIBRARY
SUPREME COURT, U.S.

Office Supreme Court, U. S.
FILED
MAR 16 1951
CHARLES ELMORE CROPLEY

No. 615 19

In the Supreme Court of the United States

OCTOBER TERM, ~~1950~~ 51

THE UNITED STATES OF AMERICA, APPELLANT

v.

OREGON STATE MEDICAL SOCIETY, OREGON PHYSICIANS SERVICE, CLACKAMAS COUNTY MEDICAL SOCIETY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

STATEMENT AS TO JURISDICTION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

Civ. No. 4255

UNITED STATES OF AMERICA, PLAINTIFF

v.

OREGON STATE MEDICAL SOCIETY, ET AL., DEFENDANTS

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this cause on November 3, 1950. A petition for appeal is presented to the district court herewith, to wit, on December , 1950.

OPINION BELOW

The opinion of the District Court for the District of Oregon has not yet been reported. A copy

of the opinion, together with the "notes" which the court attached thereto, is attached here as Appendix A. A copy of the court's findings of fact and conclusions of law is attached hereto as Appendix B.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U.S.C. 29, as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 869.

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

United States v. *U. S. Gypsum Co.*, 333 U.S. 364.

United States v. *National Assn. of Real Estate Boards*, 339 U.S. 495.

QUESTIONS PRESENTED

The major questions presented are:[1]

(1) Whether the business of organizations providing prepaid medical care constitutes "commerce" within the meaning of Section 1 of the Sherman Act and the Commerce Clause of the Constitution.

(2) Whether defendants' conduct in restraint or monopolization of prepaid medical care organiza-

[1] The appeal presents, in addition to the "major" questions stated above, all the points raised in the assignment of errors.

tions operating in the State of Oregon sufficiently affected *interstate* commerce to come within the prohibitions of Sections 1 and 2 of the Sherman Act.

(3) Whether boycott and other collective action in restraint of trade, by medical societies and their doctor members under claim of maintenance of professional standards and "ethics," are a "reasonable" restraint or monopolization of trade not within the ban of the Sherman Act.

(4) Whether agreement among defendants to eliminate competition among doctor-sponsored prepaid medical care organizations is a "reasonable" restraint of trade not prohibited by the Sherman Act.

(5) Whether the district court's general findings as to absence of conspiracy among defendants or as to their innocent purposes should be set aside, as either (a) contrary to undisputed evidence or (b) inferences resulting from application of erroneous legal principles and tests.

STATUTE INVOLVED

The pertinent provisions of Sections 1, 2 and 4 of the Act of July 2, 1890, 26 Stat. 209, as amended (15 U.S.C. 1, 2, 4) commonly known as the Sherman Act, are as follows:

> Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby

declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, * * *.

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *.

* * * * *

Sec. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *

STATEMENT

This is a civil proceeding instituted in October 1948 charging that the defendants continuously since January 1, 1936, have been attempting to monopolize, and have been engaged in a conspiracy to restrain and monopolize, interstate trade and commerce in the business of selling and furnishing prepaid medical care in Oregon and other states, in violation of Sections 1 and 2 of the Sherman Act. The complaint named as defendants the Oregon State Medical Society, eight component county

medical societies, Oregon Physicians' Service (a prepaid medical care organization sponsored by Oregon State Medical Society), and eight individuals.

Trial of the case before District Judge Claude McColloch began in October 1949 and ended in February 1950. As the case developed, there were two major issues: (a) whether the defendants had combined and conspired to restrain and suppress the business of privately-controlled organizations engaged in selling prepaid medical care in the State of Oregon and other states, and (b) whether the defendants had conspired to restrain competition among doctor-sponsored prepaid medical care organizations operating primarily in the State of Oregon.

The facts with reference to the second of these issues were either admitted by the defendants or established by substantially undisputed proof. Oregon Physicians' Service, referred to herein as OPS, is an organization sponsored and approved by defendant Oregon State Medical Society, which was organized in 1941 to provide prepaid medical care in Oregon on a state-wide basis. OPS was not intended to, and did not, compete with the prepaid medical care organizations approved by the State Society and sponsored by its component county or regional medical societies. In addition, the State Society adopted the policy of limiting the scope and character of prepaid medical care which might be

sold by the doctor-sponsored organizations. These limitations included sale of prepaid care to individuals, not families; sale of such care only to persons not having an income above a fixed amount; and eliminating drugs and medicines from the contract coverage.

Defendants' conspiracy to repress or eliminate privately-controlled prepaid medical care organizations, the other major issue in the case, is believed to be established by undisputed documentary evidence. The State Society invited its component county societies to bring disciplinary proceedings against doctors who cooperated with medical care organizations not approved by the State Society. Any of the following acts were declared to be a ground for such proceedings: directly billing, or accepting a check from, such an organization; making reports to it concerning a patient's condition; becoming one of a limited panel of doctors whom it might call upon; any other conduct "indicating association with" such an organization. The proof further showed that, as a result of disciplinary proceedings against doctors cooperating with non-approved organizations, brought by the county society which was the leading component member of the State Society, 30 doctors were expelled or suspended, or resigned, or discontinued their dealings with non-approved organizations.

The proof showed widespread refusal by doctor members of the defendant societies to "take

tickets," i.e., to bill non-approved medical care organizations for services rendered persons covered by their contracts. It also showed that under the impact of defendants' boycotting activities, two privately-owned organizations providing prepaid medical care in Oregon were forced to discontinue sale of such care.

On September 28, 1950, the district court rendered an opinion holding that the Government had failed to prove any of its charges. The "opinion," to which the court appended certain "notes made at various stages throughout the trial," is a summary statement of the court's conclusions on the law and facts.

The district court's opinion and notes indicate that it misconceived the issues presented by the Government insofar as they related to doctor-sponsored organizations. The charge was, not that it was unlawful to set up such organizations as competitors of privately-controlled medical care organizations, but that it was unlawful for the defendants to agree that the doctor-sponsored organizations should not compete with each other and to agree upon the limits of the medical care which the individual doctor-sponsored organizations would provide.

In its opinion the court stated that it was assuming, without finding, that "interstate commerce is involved." The opinion also states that the court will make a finding or conclusion that

"the practice of medicine is not a trade within the meaning of the Sherman Law." While we regard such conclusion as irrelevant to the issues, the findings of fact subsequently made by the court state (No. 42) that the "sale" of medical service by doctor-sponsored "organizations" is not trade or commerce within the meaning of Section 1 of the Sherman Act or commerce within the meaning of the Commerce Clause of the Constitution.

The opinion and notes indicate that the district court conceived that the real issue in the case was socialized medicine versus professional freedom, and that the conduct which the Government charged as being in violation of the antitrust laws constituted measures legitimately taken by the doctors to protect themselves from socialization. In Note 13 the court posed the question whether "organized medicine must remain a sitting duck while socialism overwhelms it." The following note states: "Socialized medicine may overtake them but the doctors claim the right to save the profession from socialism. That is what this case is about, according to the doctor's viewpoint." In Note 15 the court posed the question whether the doctors organized OPS "to save themselves and their profession from threatened socialization," and in Note 17 he quoted the following from a bulletin of the Oregon State Bar: "The trend and drift toward Socialized Medicine should be all the lawyer needs to recognize that Socialized Law is

but the next step for those dedicated to the socialized-police state * * *."

On November 3, 1950, the court filed its findings of fact and conclusions of law and entered judgment dismissing the compiaint. It is the Government's position that none of the findings which would have to be set aside if the judgment below should be reversed represents the district court's resolution of testimonial conflicts. In our view such "findings" in large measure either constitute or reflect erroneous legal conclusions, or they are inferences, drawn from undisputed facts, which must be rejected because they are the product of erroneous tests and principles. The Government's documentary evidence, which was the heart of its case, was entirely uncontradicted. The testimony of the Government's witnesses was also almost entirely uncontradicted.[2]

THE QUESTIONS ARE SUBSTANTIAL

(1) The appeal presents the question whether organizations which make contracts to provide medical care within defined limits, in consideration of the advance payment of specified charges, are engaged in trade or commerce within the scope of prohibitions of Sections 1 and 2 of the Sherman

---

[2] One aspect of the testimony of one Government witness was contradicted by a defense witness; another Government witness made contradictory statements with reference to one aspect of his testimony; and one aspect of the testimony of the only hostile witness called by the Government was impeached by the testimony of another Government witness.

Act and the regulatory power of Congress under the Commerce Clause. With the recent growth in the number of such organizations and in the volume of their business, this is a question of law of great public importance. We believe that the opinions of this Court, and particularly *United States* v. *National Association of Real Estate Boards*, 339 U.S. 195, require the conclusion that restraint upon or monopolization of the business carried on by such organizations come within Sections 1 and 2 of the Sherman Act provided the restraint or monopolization affects activities which are interstate.

(2) The appeal presents the substantial question of whether restraint or monopolization of the business of organizations undertaking to provide prepaid medical care in the State of Oregon affected interstate commerce to a sufficient degree to make the prohibitions of Sections 1 and 2 of the Sherman Act applicable. The organizations of this kind operating within the State of Oregon provided for medical care required by Oregon residents while in other states, and for medical care of Oregon residents engaged in interstate commerce. They procured part of their needed supplies from other states. Some of these organizations provided for medical care of persons residing both in Oregon and in other states and such organizations regularly transmitted policies, sums of money, reports, instructions and correspond-

ence across state lines. See the district court's findings, Nos. 13-18. We believe that the facts bring the case within *United States v. Southeastern Underwriters Association*, 322 U.S. 533 and other decisions of this Court holding that the restraints shown applied to interstate commerce.

(3) The appeal presents the substantial question of whether a boycott and other collective action of the kind prohibited by the Sherman Act are to be deemed "reasonable" and therefore permissible restraints, solely by reason of the fact that the restraints are imposed through the medium of organizations of professional men under the claim that their activities are directed toward maintenance of professional standards and "ethics." In the proceedings against the American Medical Association and the Medical Society of the District of Columbia which came before this Court in 317 U.S. 519, the Court of Appeals for the District of Columbia gave such question some consideration (110 F. 2d 703, 712; 130 F. 2d 233, 248), but it was not dealt with directly by this Court under its limited grant of certiorari. See 317 U.S. at pp. 527-528, 532-533.

(4) Congress has recognized the importance of civil proceedings brought by the Government to enforce the prohibitions of the Sherman Act by providing that appeal from the district court's decision lies direct to this Court. The factual determinations made by a single judge are therefore

not subject to any judicial review unless this Court entertains an appeal presenting, among other issues, the validity of the findings below. Accordingly, we believe the policy of Congress requires that this Court review questions of fact in anti-trust cases where it is contended that the findings are clearly erroneous, as we think they plainly are here. In the present case not only are a number of the findings contrary to undisputed evidence, but questions of law permeate many of the findings of fact, and other findings of a conclusory nature must be regarded as resting upon a misconception of the real nature of the issues presented.

We believe that the questions presented by this appeal are substantial and that they are of public importanee.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

APPENDIX A

UNITED STATES DISTRICT COURT, DISTRICT OF OREGON

Civ. No. 4255

UNITED STATES OF AMERICA, *Plaintiff*

vs.

OREGON STATE MEDICAL SOCIETY ET AL, *Defendants*

OPINION, FINDINGS AND NOTES

Filed: September 28, 1950

My work as a trial judge does not permit the preparation of a formal opinion in so complex a case. I will state my conclusions on the main issues and then will append some notes made at various stages throughout the trial. These may be of aid to counsel in the preparation of Findings of Fact and Conclusions of Law to be submitted as a basis for final judgment.

Government's Contentions

The Government contends (1) that defendants beginning about 1936, conspired to restrain and monopolize prepaid medical care "in the State of Oregon" (2) that "each of the medical societies" (Oregon State Medical Society and eight county

and regional societies) "attempted to restrain and monopolize prepaid medical business in areas where they operate;" and (3) that "each of the medical societies (Oregon State Medical Society and eight county and regional societies) "did restrain and monopolize prepaid medical business in areas where they operate."

I hold that none of the Government's charges have been proven by a preponderance of the evidence.

The Time Factor

The Government presents its case against the Doctors under four time headings: 1930-1936, the year 1936; 1936-1941, and 1941 to date.

I prefer to group the controlling events into two periods: (1) Prior to the organization of the Doctors' own statewide plan in 1941; and (2) from the organization of the Doctors' plan (Oregon Physicians' Service) in December, 1941 to date.

During the first period the Doctors were fighting defensively. They were quarreling among themselves and their chief antagonist exploited their dissension. This is the period of expulsion of doctors from medical societies—an unhappy and unfortunate period. Only death of the parties will close all the wounds that were made at that time. This period is ancient history. It has no legal or causal connection with the period 1941 to date, following the organization of the Oregon Physicians' Service.

The fatal weakness of the Government's case I feel is the attempt to tie the periods 1936-1941 and 1941 to date together.

The Question for Decision

The question then left for determination is whether the Oregon doctors in the formation of their own prepaid non-profit organization, OPS, have violated the anti-trust laws. As competitors of the privately owned-for-profit organizations in the same field have the doctors transgressed the bounds of legitimate competition? I hold that they have not.

The Period 1936-1941

This was the period when the Doctors were trying to find themselves. It was a defensive period. The Doctors felt they were being exploited. They were trying to maintain their professional standards. They felt the doctor-patient relationship was being destroyed. It was a period of groping for the correct position to take to accord with changing times. The Doctors sponsored their own prepaid plan (Multnomah) and then repudiated it. What the Doctors did during this period was not conspiracy.

The Period 1941 to Date

I really doubt that the Government believes the operations of Oregon Physicians' Service are monopolistic. Its two chief competitors are tremendously profitable; they have the cream of the business, going only into selected areas whereas OPS must go everywhere and has many other weaknesses inherent in cooperative enterprise.

I hold that *Oregon Physicians' Service* is not a conspiracy but, rather, an entirely legal and legitimate effort by the profession to meet the demands

of the times for broadened medical and hospital service, eliminating the evils of privately owned concerns as well as the element of private profit.

Are the Professions Exempt from the Sherman Act?

This question has been reserved by the Supreme Court. I make reference to it in the Notes that follow.

Interstate Commerce

I am assuming (without finding) that interstate commerce is involved in this case.

Findings on Controlling Issues

I will make a finding that the defendants did not conspire to restrain and monopolize prepaid medical care in the State of Oregon.

I will make a finding that defendant medical societies did not attempt to restrain and monopolize prepaid medical business in areas where they operate by express agreement or concert of action within their own groups or with third parties.

I will make a finding that defendant medical societies did not in fact restrain and monopolize prepaid medical business in areas where they operate by express agreement or concert of action within their own groups or with third parties.

I will make a finding that defendant doctors and medical societies have not restrained or sought to restrain the use of hospital facilities by others, except in cases of lawful and legitimate professional discipline of individual doctors for unpro-

fessional conduct detrimental to their patients, to the hospitals and to the public generally.

The Government says regardless of motive, if the necessary result of action is monopoly, the statute applies. But I find (1) that the motive (intent) of defendants was not to restrain or monopolize; and (2) that monopoly did not in fact result and does not exist. Nor does unreasonable restraint exist.

I will make a finding that if there was a conspiracy, as alleged by the Government, the thread was broken and the conspiracy ended when a large percentage of Oregon doctors entered the Armed Forces in the period 1941-1945.

I will make a finding that if there was conspiracy, as alleged, the thread was broken and the conspiracy ended when the organized doctors of Oregon reversed their position in 1941 and engaged in contract practice through the medium of their own organization, Oregon Physicians' Service. If the doctors had previously been conspirators, they then became competitors, competing with the existing privately owned and operated prepaid medical care organizations.

I will make a finding that OPS and the doctor-owned county and regional plans are business competitors with the privately owned profit making organizations and that, as competitors, the doctors have conducted their organizations fairly and well within the legal limitations of competitive business practice.

I will make a finding and/or conclusion that the practice of medicine is not a trade within the meaning of the Sherman Law.

Findings on Subsidiary Issues

Rule of Reason

Years ago the Supreme Court applied the "Rule of Reason" to anti-trust prosecutions. I will make a finding that the restraint of trade (if any) in this case was and is not unreasonable. I do not include in this fee fixing for, as I state in another Note, if doctors are held to be engaged in a trade, they cannot "fix fees" under the Supreme Court's decisions. Incidentally, the privately owned hospital associations fix fees and they are engaged in a trade.

The Purpose of Oregon Doctor-owned Plans

I will make a finding that OPS and the various county or regional doctor-owned or doctor-sponsored prepaid medical plans were not formed to eliminate or restrain organizations already in the field; on the contrary, they were formed to meet the social need which had arisen for group medical care, eliminating the element of private profit, over and above legitimate hospital and medical charges.

"Taking Tickets"

I will make a finding that there is no present conspiracy, combination, agreement or concert of action among doctors not to "take tickets" of privately owned hospital associations.

I will make a finding and/or conclusion that refusal to "take tickets" of privately owned associations is not boycott.

Boycott

I will make a finding and/or conclusion that defendants have not in recent times (if ever) boycotted privately owned hospital associations, and that they do not, so far as the evidence or legitimate inferences show, intend to boycott privately owned hospital associations in the future.

Restraint of Hospitals

Was alleged but nothing substantial offered in proof.

NOTES

Note 1

Restriction (?) of Prepaid Coverage

A greater per cent of Oregon covered by prepaid plans than in any other state. (p. 455 Government brief.)

Note 2

This is not Monopoly

Only 120,000 out of 1,510,000 people in the state belong to OPS.

Note 3

Hard to Follow

The Government charges that OPS is engaged in a conspiracy to monopolize *statewide* prepaid medical care, but OPS is criticized because it does not go into certain counties.

Note 4

"Allocation of Territory"

Obviously, two doctor-sponsored plans, one statewide, the other local, could not operate in Klamath

County, to take an instance. If the needs of the public are adequately taken care of in a particular county through the activities of local physicians, the profession's duty as to prepaid medical care in that particular county is fully discharged. On this point, the Government has fallen into absurdity. Apparently it says OPS should use X county physicians to compete with county X physicians.

Note 5

There is frequent reference in the Government's brief to the "economic aspect" of the defendant doctors' activities.

It was said "The laborer is worthy of his hire."

Note 6

Fee Fixing "Activities"

This expression is used in the Government's brief. Is supervision of fees within a profession unlawful? Barbers do it, bricklayers, beauty operators, milk men.

Note 7

Fee Fixing

Of course, if the professions are trades, then fee schedules become (under Supreme Court decisions) per *se* unlawful.

The question of fee fixing has become academic in the present case because the case revolves around the legitimacy of the operations of the doctors in competition with the privately owned plans. The Government concedes the right of the doctors to

compete in this field and the fixing of fees is of the very essence of all prepaid plans, whether doctor-owned or privately owned.

Note 8

Power

The Government in Sherman Act prosecutions is the particular group in charge of the anti-trust department of the Department of Justice at the time, and the type of prosecutions brought in a given era reflect the economic and social views of those in power at that time. Instance: Attempts by Assistant Attorney General Arnold to subject Organized Labor to the anti-trust laws.

Note 9

"The Sherman Act Means What the Courts Say It Does"

The Supreme Court has held that Organized Labor does not come under the anti-trust laws. This was court-made law.

Can it be justly contended that the Congress intended to include the professions when it enacted the Sherman law in 1890? The American Medical Association had been in existence 43 years. The American Bar Association was organized in 1878.

Note 10

Variable National Policies

During the late war, exemption from the anti-trust laws was given to large enterprises in order to attain maximum production of vital materials.

(Legislation just enacted 9/23/50 appears to authorize exemptions during the present Korean crisis.)

N. R. A.

was an interesting aberration. The oil companies pleaded unsuccessfully that they were only doing what they had been encouraged to do under N. R. A. (310 U.S. 150.)

Note 11

Court-made Policies

A keen analyst has said the Sherman Act "suffered from bad draftsmanship." That this is a broad field for court-made law was the observation of Judge Learned Hand in the recent New York communist cases.

Note 12

The Age of the Common Man

In a measure, this case is an attack on the professions. Everything critical of the doctors that has been said in the case could be said of the legal profession.

The World Revolution that we hear about allows no place for the professions. All that is principle, dignity, the efforts of the ages to create an aristocracy of intellect—these are to be destroyed in the interest of "the common man."

He will be "common", indeed, without professions in the society which he is to rule.

Note 13

Self-Preservation

Leaders among the doctors maintain the view that doctor-owned prepaid medical plans are the profession's answer to socialism.

Can it be that a profession may not defend itself by reorganization of its methods, by doing within the profession what has been compelled elsewhere by law; that, thus, to reorganize and seek to preserve its independent status makes an organized profession and its leaders criminals and subject to the injunctive power of the courts?

In short, that organized medicine must remain a sitting duck while socialism overwhelms it? I would not expect an American court to hold that.

Note 14

Socialized Medicine

may overtake them but the doctors claim the right to save the profession from socialism. That is what this case is about, according to the doctors' viewpoint. As to this defense it must be conceded that the purpose with which action is taken is of prime importance under the Sherman Act.

Note 15

Constitutional Democracy

is not a one-way road. Those seeking changes, radical or otherwise, may urge them. Those who believe in things as they are or who seek to retain them in modified form may oppose radical change, without becoming subject to the criminal laws. That certainly includes vitally interested parties whose way of living, whose living itself, is threatened. This is entirely aside from considerations of public interest.

I may be one of the most despicable persons in the community and, having great wealth, put it to entirely anti-social uses. Under our system, I may

fight for the right to continue my way of life. Social forces, acting through the Government, may impinge on me but I can oppose them with all my might. That is one of the issues in this case. What was the purpose of the doctors in organizing the Oregon Physicians' Service? Was it to obtain a monopoly in the prepaid medical field, or was it to save themselves and their profession from threatened socialization? I hold it was the latter and that nothing in the anti-trust laws deprives them of the right to fight to defend their independent professional status. *That is entirely different from whether socialization can be lawfully forced on them.* I might add that any other construction of the statute would raise the gravest questions.

Note 16

JUDGE LEARNED HAND

said: "A monopoly of all those interested in an activity is no monopoly at all, for no one is excluded, and the essence of monopoly is exclusion * * *. *If other services* (hospital associations in this case) *were incidentally driven out, that would not be an actionable wrong.*" 52 F. Supp. 362, 374.

Membership in Oregon Physicians' Service is open to all doctors in good standing in a medical society, local or State. Query, under Judge Learned Hand's definition, if all doctors, members of medical societies, became members of O.P.S., would this be a monopoly?

In this connection, I will make a finding that it has not been shown that at any time within recent years, has membership in any medical society been

denied to a doctor because of his connection with any private hospital association.

Note 17

The Legal Profession Next

"The trend and drift towards Socialized Medicine should be all the lawyer needs to recognize that Socialized Law is but the next step for those dedicated to the socialized-police state. . . .

"The socialization of the law, if lawyers permit it to come about, will ultimately contribute more to the destruction of Democracy than any other thing that can happen. It can happen here!"

(Quoted from Oregon State Bar bulletin, Alexander B. Brown, editor, August, 1950.)

Note 18

JUDGE WILKIN

has pointed out the slowness of the legal profession to organize in the United States. The American Bar Association was organized in 1878.

It was unlawful in one of the Colonies to practice law. The cycle is that way again.

Note 19

The Professions

are monopolies, but they are not *per se* unlawful because they are not trades.

Note 20

Compliment to Government Counsel

I desire to compliment Mr. Marcus and his staff that they have not pressed in this case for a hold-

ing that professions are trades, but have been willing to rest their case on other grounds.

Note 21

Slaves

Judge Robert N. Wilkin says Greek slaves were the physicians in Rome. To this he attributes the late rise of Medicine as a profession, as compared with law. ("The Spirit of the Legal Profession", p. 157)

Note 22

Doctors

like lawyers, are not popular but they have this advantage, they are an absolute necessity.

It was said in the last war every ship having a complement of one hundred men or more had a doctor (Compare Horatio Hornblower); on the battlefields a doctor was within reach of every wounded man.

Apparently lawyers reached the peak of their popularity early. (See Gibbons' great Chapter 44.)

Note 23

An Ohio Will:

"Shun preasts of all orders; Drs. of all profession and lawyers of all grades. I don't include Surgerry with Doctors, and above all class that afflict humaity the lawyers is the worst."

Note 24

Flexing Their Muscles

Union witnesses were offered by the Government to testify angrily that doctors would not give

them itemized statements. I think the issue was magnified, but I was struck by the attitude of the men towards the professions.

Note 25

Klamath

A striking instance of local initiative is furnished by the Klamath County doctors. At a cost to themselves of $400,000, the Klamath doctors purchased and modernized two privately owned hospitals. They did this because hospital costs were too high under private management and the service was not adequate.

Needless to say, after this heavy investment, the Klamath doctors have their own local prepaid plan and for this, although not named as defendants, they are charged with being parties to the alleged statewide conspiracy to restrict medical care.

I have great difficulty in following the Government's criticism of county and regional doctor groups who have set up their own local prepaid plans. They are but discharging their duty to their own local people, it seems to me.

Is this what the Government wants: That doctors should leave the field to the privately owned companies? Certainly not that, for at the trial the Government lawyers conceded the right to the doctors to compete.

Note 26

Some Quotes:

> Loyalty to the client's interest is the highest duty of a lawyer. Socialization would destroy the independence of the Bar and create a loyalty above that owed to the client.

> The professional service of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer.

The above quotations sound very like the doctors' utterances that are condemned by the Government in this case. The quotations are from *1950* writings of the American Bar Association.

Canon 35 of the Canons of Professional Ethics of the American Bar Association provides:

> INTERMEDIARIES
>
> The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal and responsibility should be direct to the client. . . .

Note 27

The A.M.A. Case

The present case represents an effort to apply the decision obtained against the American Medical Association (317 U.S. 519) to Oregon. The facts are different. The times are different.

Note 28

Amends to Dr. Moore and Others

Since doctors generally are now doing the same things for which they expelled their brothers in

1936 and years following, fair play suggests that amends, where possible, be made to those still living. Doctors expelled or who resigned under pressure from the medical societies should be returned to membership.

The foregoing findings and notes may be deemed and treated as Findings of Fact on factual matters and as Conclusions of Law on legal questions—to be supplemented by formal Findings and Conclusions if counsel deem it necessary or appropriate to submit further Findings and/or Conclusions for consideration.

Plaintiff's case was, at my request, argued fully at the end of the Government's testimony; and, having had the advantage of extensive pre-trial hearings and exhaustive briefs, I have not felt the need for further argument.

Judgment of dismissal will at a later time be entered.

Dated at Portland, Oregon this 28th day of September, 1950.

CLAUDE MCCOLLOCH,
District Judge.

APPENDIX B

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON

Civ. No. 4255 87-287

UNITED STATES OF AMERICA, PLAINTIFF

v.

OREGON STATE MEDICAL SOCIETY, ET AL.,
DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on for final hearing before the undersigned, one of the judges of the above entitled court, on the 18th day of October, 1949. Plaintiff appeared by its attorneys, Philip Marcus, Special Assistant to the Attorney General, Isidore Cohen, Gerard G. Galassi, Robert M. Weinstein, Special Attorneys, and defendants appeared by Nicholas Jaureguy (of Cake, Jaureguy & Tooze) and John J. Coughlin (of Griffith, Peck, Phillips & Coughlin). Thereupon, after opening statements, evidence was introduced by the plaintiff and by the defendants and the trial was adjourned from time to time until the 11th day of February, 1950, when all parties rested, subject to certain further proceedings. The Court took said case under advisement and having considered a brief filed by plaintiff heretofore rendered its written opinion, findings and notes. Thereafter proposed findings of fact and conclu-

sions of law were tendered by defendants and objections to said findings and conclusions and also proposed findings were offered by plaintiff. The Court having considered all of said suggested and proposed findings and conclusions and said objections now makes the following:

FINDINGS OF FACT

1. Defendant Oregon State Medical Society is an unincorporated association, having its office and principal place of business in Portland, Oregon.

2. Defendant Oregon Physicians' Service is a corporation incorporated under the laws of the State of Oregon and having its office and principal place of business in Portland, Oregon. The Oregon Physicians' Service furnishes prepaid medical, surgical and hospital care on a prepaid contract basis. It is sponsored and approved by the Oregon State Medical Society. The great majority of its stockholders and participating physicians are also members of that society.

3. Defendants Clackamas County Medical Society, Clatsop County Medical Society, Columbia County Medical Society, Douglas County Medical Society, Jackson County Medical Society, Lane County Medical Society, Marion-Polk Counties Medical Society and Multnomah County Medical Society are unincorporated associations. Multnomah County Medical Society has an office and place of business in Portland, Multnomah County, Oregon. None of said other defendants has any office or place of business. Each of said defendants is to a limited extent affiliated with defendant Oregon State Medical Society.

4. Defendant W. W. Baum is a doctor at Salem, Oregon. He is a member of the Oregon State Medical Society, and has been an officer or director of one or more of defendant corporations or associations during all or part of the time alleged in the complaint.

5. Defendant John Besson is a doctor of Portland, Oregon. He is a member of the Oregon State Medical Society and has been on the Council of Oregon State Medical Society and of Multnomah County Medical Society during part of the times alleged in the complaint.

6. Defendant J. P. Brennan is a doctor at Pendleton, Oregon. He has been an officer or director of one or more of defendant corporations or associations during all or part of the times alleged in the complaint.

7. Defendant John H. Fitzgibbon is a doctor at Portland, Oregon. He has been an officer of one or more of the defendant associations during all or part of the times alleged in the complaint.

8. Defendant Charles E. Hunt is a doctor at Eugene, Oregon. He has been an officer of one or more of the defendant associations during all or part of the times alleged in the complaint.

9. Defendant Gordon B. Leitch is a doctor at Portland, Oregon. He has been an officer or director of one or more of the defendant corporations or associations during a part of the times alleged in the complaint.

10. Defendant K. H. Martzloff is a doctor at Portland, Oregon. He has been an officer of one or more of the defendant associations during all or part of the times alleged in the complaint.

11. Defendant E. H. McLean is a doctor at Oregon City, Oregon. He has been an officer of one or more of the defendant associations during all or part of the times alleged in the complaint.

12. Various organizations in Oregon are engaged in the business of paying for or supplying medical care to individuals, groups of individuals, and business concerns on a contract basis.

13. Northern Permanente Foundation was organized some time subsequent to the 1st of January, 1942, and prior to the 1st of January, 1945, by the Kaiser shipbuilding organization. Shortly after the end of the war it was reorganized into a partnership of doctors, there being about seventeen such doctors in the partnership at the time of the trial of this case. Some of these doctors, members of the partnership, reside and have offices in Vancouver, Washington, and some of them reside and have offices in Portland, Oregon. Some of them are members of Clark County (Washington) Medical Society and some of them are members of Multnomah County (Oregon) Medical Society. The partnership enters into contracts with residents of Washington and also with residents of Oregon for the furnishing of prepaid medical care. It has an office in Vancouver, Washington, and an office in Portland, Oregon. It does not appear from the evidence whether contracts entered into with Oregon residents are written in the Portland, Oregon, office or in the Vancouver, Washington, office.

With this exception, no organizations with offices outside of Oregon offer to make or do make contracts with residents of Oregon for prepaid

medical, surgical or hospital care or allied services. However, indemnity insurance companies incorporated in other states sell insurance policies in Oregon providing indemnity against expenses incurred for doctors' and hospital services, as stated in finding 35.

14. Organizations having their main offices in Oregon have sold prepaid medical care policies in the states of Oregon, Washington and California. Organizations doing prepaid medical insurance business in the State of Oregon use interstate transportation and transmission facilities to transmit across state lines policies, reports, instructions and correspondence, and reports and communications go between said Oregon organizations and agents, doctors and customers located in states other than Oregon. Medical care policies and payments thereon by policyholders have gone in interstate commerce between the State of Oregon and other states. Prepaid medical policies issued by Oregon organizations cover reimbursement for medical care required by Oregon residents while in other states. Said Oregon organizations arrange to pay for said medical care rendered by doctors, hospitals and others in other states. All of these transactions necessitate dealings between said Oregon organizations and individuals and organizations in other states.

15. Organizations engaged in the sale and furnishing of prepaid medical care in Oregon from time to time in connection with first aid supplies furnished by them, purchase and procure medicines, drugs, medical supplies and instruments shipped from other states into the State of Oregon.

16. Many industrial concerns located in Oregon are parties to contracts with organizations under which their employees secure prepaid medical care. Industrial concerns having places of business in some other states carry prepaid medical insurance for their employees with prepaid medical care organizations having their main offices in Oregon. Some of their employees reside in states other than Oregon.

17. Doctors practicing in Oregon treat patients who have come from other states to secure medical care in Oregon. Some of such patients are policyholders of Oregon prepaid medical care organizations. The facilities of hospitals located in Oregon are sometimes used by residents of other states who have come to Oregon for the purpose of using said facilities. Doctors in other states sometimes treat members of Oregon prepaid medical care organizations who are residents of the State of Oregon, and hospitals in other states are used by residents of Oregon, including some members of Oregon prepaid medical care organizations.

18. Medicines, drugs, medical supplies and equipment continuously come into the State of Oregon as the result of medical care by Oregon doctors and hospitals.

19. Unless doctors and hospitals in Oregon provide medical treatment to members of prepaid medical care programs, performance of contracts for prepaid medical care is made impossible.

20. None of the defendants, either at any of the times set forth in the complaint or at any other time, have attempted to, or have been engaged in any combination or conspiracy to, restrain or

monopolize the business of selling or furnishing prepaid medical care in the State of Oregon or elsewhere; or to restrain or monopolize interstate trade or commerce in said business; nor do any of the defendants threaten or intend to do so.

21. There has been no conspiracy, agreement, combination or concert of action among the defendants during the times alleged in the complaint or at any other time (a) to monopolize or attempt to monopolize prepaid medical care business in the State of Oregon or between the State of Oregon and other states, or (b) to limit the scope of medical care to be provided by prepaid medical care plans in the State of Oregon, or (c) to prevent, hinder or obstruct prepaid medical care organizations other than those sponsored by defendants, or any of them, from continuing to engage in or from engaging in the business of selling or furnishing prepaid medical care in Oregon or elsewhere, or (d) to restrain residents of Oregon or other states from entering into or continuing under prepaid medical care plans not sponsored or supported by defendants, or any of them, or (e) to prevent doctors from cooperating in prepaid medical care plans not sponsored or approved by defendants, or (f) to restrict the use of hospital facilities by doctors cooperating in prepaid medical care plans other than those sponsored or approved by defendants, or (g) to prevent Oregon hospitals from allowing their facilities to be used by doctors or patients associated with prepaid medical care plans other than those sponsored or approved by defendants.

None of the defendants has conspired or combined or agreed or proceeded by concert of action

or otherwise to restrain or monopolize trade or commerce in the manner or by the means charged in plaintiff's complaint, or otherwise.

22. Prior to 1941, some of the defendants advised doctors not to cooperate with commercial prepaid medical care organizations in certain practices engaged in by them, but such action on the part of certain of the defendants was not the result of any conspiracy or combination or attempt to restrain or monopolize the business of prepaid medical care, but was for the purpose of maintaining the standards of medical practice among the members of medical societies.

23. Prior to 1941, defendant Multnomah County Medical Society expelled certain members who were associated with certain types of contract practice and threatened the expulsion of other members so engaged, but such action by said defendant society was not the result of any combination, agreement or conspiracy in restraint of trade or commerce or otherwise and was for the purpose of maintaining and advancing the standards of medical practice of members of said defendant society; and no other defendant has ever expelled, threatened or incited the expulsion from medical societies of any doctors because of any cooperation in prepaid medical care plans, and since 1941, none of the defendants has expelled, threatened or incited the explusion from medical societies of doctors cooperating in medical care plans other than those sponsored by the defendants.

24. Defendants have formed and promoted certain prepaid medical care plans, but such action on the part of defendants was not pursuant to any

conspiracy, combination or attempt to restrain or monopolize trade or commerce and was not with the intent to drive out, hinder and obstruct commercial prepaid medical care plans operating in the State of Oregon, but it was with the intention to compete with such commercial medical care plans; and such plans have not been driven out of the State of Oregon by defendants; and have not been hindered or obstructed, except as they may be affected by legitimate competition of plans sponsored by defendants.

25. None of the defendants at any time has interfered with or attempted or combined or conspired to interfere with commercial prepaid medical care organizations in obtaining hospital facilities for their members.

26. None of the defendants at any time has refused to treat patients or caused others to refuse to treat, or combined or conspired to refuse to treat any patients who were members of any prepaid medical care plan, or discriminated against any such patients by reason of such membership.

27. None of the defendants has refused or encouraged other doctors to refuse, or conspired or combined to refuse, to give patients itemized statements to enable the patients to be reimbursed under any plan of prepaid medical care.

28. None of the defendants has refused to consult or assist, or encouraged others not to consult or assist, or conspired or combined to refuse to consult with, doctors who treat members of any prepaid medical care plan.

29. None of the defendants has spread any false propaganda for the purpose of discrediting pre-

paid medical care plans not endorsed by defendants.

30. It has been the policy of the defendants either to furnish or to encourage others to furnish prepaid medical care throughout the State of Oregon. In counties where some local prepaid medical care plan operated by the local doctors has been in force, Oregon Physicians' Service has not attempted to interfere with any such plan and has not, with certain exceptions, sold prepaid medical care contracts in any such locality.

Oregon Physicians' Service was intended to be an agency, and has in fact been an agency, to provide a prepaid medical care plan in Oregon by a doctor-sponsored group in areas where such a plan had not yet been organized by the local doctors; and in cases where groups of patients live or work in more than one county; and in cases where the local doctors' plan has not yet provided for auxiliary contracts, such as "family contracts" or "individual contracts". Oregon Physicians' Service provides for medical and hospital care, in one form or another, in every county in Oregon. Most of the doctors participating in the local doctor-sponsored plans are also participating physicians of Oregon Physicians' Service.

No local plan of prepaid medical care sponsored by doctors of any county has attempted to sell contracts for prepaid medical care in other counties without the consent of the doctors in such other counties who would render the services provided in said contracts. The reasons for these policies are, first, that defendants believe that doctors should not attempt to sell the services of other doctors without their consent, and, second, com-

petition between two doctor-sponsored plans in a single county is impractical, since the same doctors must render services under whatever plans are in operation. These policies and the carrying out of these policies have not been a result of any conspiracy or combination in restraint of trade or commerce and have not resulted in restraining or monopolizing the business of selling or furnishing prepaid medical care.

31. None of the defendants has conspired, combined or attempted at any time to make hospital facilities in Oregon available only to members of defendant Oregon State Medical Society or its component county medical societies, nor have the defendants or any of them ever restricted or excluded other qualified doctors from the use of hospital facilities by others; there have, however, been members of one or more defendant societies who have sought to prevent the use of hospital facilities by other doctors, but only in cases of lawful and legitimate professional discipline of individual doctors for unprofessional conduct detrimental to their patients, to the hospitals and to the public generally, which conduct had no relationship to prepaid medical care business.

32. No act or conduct on the part of defendants has prevented or hindered prepaid medical care organizations in entering into or expanding their business in Oregon, except that defendants through prepaid medical care organizations sponsored by them have entered into lawful competition with prepaid medical care organizations other than those sponsored by them; nor has the business of any such organization outside the State of Oregon been impeded or impaired in its ability to do busi-

ness by any conduct on the part of any of the defendants other than such competition.

33. No act of the defendants has had the effect (a) of depriving any member of the public of a fair and free opportunity to acquire prepaid medical care insurance from organizations competing with one another in a free market, nor (b) of causing any members of the public to be deprived of medical care, nor (c) of causing business concerns to be deprived of any opportunity to obtain prepaid medical care insurance for their employees in an unrestrained market, nor has the business of any such business concerns been adversely affected by acts or conduct of any defendants, nor (d) of causing doctors to be deprived of any opportunity to practice medicine on terms of their own choosing, nor (e) of causing doctors to be denied the use of hospital facilities in Oregon, nor (f) of causing hospitals to be denied the privilege of making their facilities available to doctors and members of the public, nor (g) of causing the market for the sale and distribution of medicines, drugs, medicine supplies and medical equipment to be restricted.

34. Defendant medical societies are voluntary associations. Membership or non-membership in any of defendant societies has no effect on the privilege to practice medicine in Oregon under state laws. Membership on a hospital staff in Oregon is granted or withheld by the governing body of the particular hospital and has not been granted or withheld from any doctor because of his connection with any prepaid medical care organization, whether such organization was sponsored by defendants or not.

No doctor has been deprived of any staff membership in any hospital in Oregon because of his connection with any prepaid medical care organization not sponsored by defendants.

35. It is common knowledge, of which this Court takes judicial knowledge, that there are many insurance companies incorporated and having offices in states other than Oregon which sell insurance policies within Oregon providing for prepaid medical care plans in the form of indemnity insurance. No proof has been adduced as to the volume of such business, but such volume is large. Defendants approve all indemnity insurance plans, and have approved such plans through the period involved in this suit. No attempt has been made by the plaintiff to prove restraint upon such plans by defendants, and there is no evidence of any such restraint.

36. In the early days of the period made the subject of this suit, hospital associations engaged in many practices which interfered with the doctor-patient relationship in Oregon and which were not to the best interests of the doctors' patients. These practices had the effect of increasing the profit of the associations. Because of these practices, the hospital associations alienated individual doctors. Some doctors who were practicing during such early period still hold animosity against such associations. But with the evolution of the hospital association business, and the gradual tendency to eliminate abuses, and the coming of new doctors on the scene, the past is gradually becoming forgotten.

37. The motive and intent of defendants has not been to restrain or monopolize, and monopoly has

not in fact resulted and does not exist, nor does any unreasonable restraint exist in the business of prepaid medical care or the furnishing of medical care by reason of any act or conduct of defendants, or any of them.

38. If there was a conspiracy prior to 1941, as alleged by the Government, the Court finds that a large percentage of Oregon doctors entered the armed forces in the period 1941-1945, and that at that time the thread was broken and the conspiracy ended.

39. If there was a conspiracy, as alleged by plaintiff, prior to 1941, the Court finds that the thread was broken and the conspiracy ended when the organized doctors of Oregon reversed their position in 1941 in regard to offering a plan for prepaid medical care and engaged in contract practice through the medium of their own organization, defendant Oregon Physicians' Service; and if the defendants or any doctors of Oregon had previously been conspirators, they then became competitors, competing with the existing privately owned and operated prepaid medical care organizations.

40. Defendant Oregon Physicians' Service and also the doctor-owned county and regional prepaid medical care plans are business competitors with the privately-owned profit making organizations operating in the State of Oregon and, as competitors, the defendants and other doctors of Oregon have conducted their organizations fairly and well within the legal limitations of competitive business practice.

41. The practice of medicine as conducted within the State of Oregon by doctors of Oregon, including defendants, is not trade or commerce within

the meaning of Section 1 of the Sherman Antitrust Law, nor is it commerce within the meaning of the constitutional grant of power to Congress "to regulate commerce . . . among the several states".

42. The sale of medical services, by doctor sponsored organizations, as conducted within the State of Oregon, is not trade or commerce within the meaning of Section 1 of the Sherman Antitrust Law, nor is it commerce within the meaning of the constitutional grant of power to Congress "to regulate commerce . . . among the several states".

43. If there has been any restraint of trade by reason of any act or conduct of the defendants, or any of them, the Court finds that such restraint was and is not unreasonable.

44. Some or all of the defendants have participated in the preparation and promulgation of schedules of fees to govern charges to be made by doctors in the furnishing of medical and surgical care provided in connection with (1) the prepaid medical care plans of Oregon Physicians' Service and other doctor-sponsored prepaid medical care plans in the State of Oregon, and (2) activities of certain governmental agencies, at the request of such agencies. The schedules of fees used in connection with Oregon Physicians' Service and other doctor-sponsored prepaid medical care plans do not themselves necessarily set forth the actual fees to be collected by doctors, but instead determine the relative proportions of the net profits of such prepaid medical care plans, during any given period of time, to be received by doctors for specified medical services. Doctors participating in said plans agree to accept compensation for services based upon a

percentage of the amount available for distribution to doctors after deduction of hospital charges and other expenses.

Except in connection with the rendering of services under said prepaid medical care plans or governmental activities, there has been no attempt by any of the defendants to fix or designate fees or charges to be made by doctors in Oregon in the rendering of medical or surgical services.

The Court further finds that the fixing of fees is a necessary element and of the very essence of all prepaid medical care plans, whether doctor-owned or privately-owned, and that all prepaid medical care organizations in Oregon, including commercial organizations, fix or designate or determine fees for services under or pursuant to or in cooperation with said plans. In the case of doctor-sponsored prepaid medical care organizations, the purposes of these fee schedules are as above stated; and in the case of commercial organizations, the schedule of fees designates either (1) the amounts to be paid doctors for specified services, or (2) the maximum amounts of indemnity to be paid members of or subscribers to said organizations for fees paid or incurred by them for medical or surgical services.

45. Defendant Oregon Physicians' Service and the various county or regional doctor-owned or doctor-sponsored prepaid medical plans were not formed to eliminate or restrain organizations already in the field; nor were they formed to prevent or hinder or restrain other organizations from entering into the business of prepaid medical care; but on the contrary, they were formed to meet the social need which had arisen for group medical

care, eliminating the element of private profit, over and above legitimate hospital and medical charges.

46. As used in this finding, the expression to "take tickets" means that a doctor rendering services to a member of a prepaid medical care plan sends his statement for services to the corporation or other organization owning or controlling said plan, and accepts checks from said organization. The Court finds that there is no present conspiracy, combination, agreement or concert of action among doctors not to accept payment from privately hospital associations; nor is there any conspiracy, combination, agreement or concert of action among doctors not to accept payment from privately owned hospital associations. The Court further finds that refusal by doctors to "take tickets" of or accept payment from privately owned associations is not boycott.

The Court further finds that the private hospital associations operating in Oregon have not insisted or requested that doctors "take tickets" and that the contracts of such associations do not obligate them to make payment to doctors who "take tickets". Both under such contracts and the practice of such hospital associations, if the patients receive from the doctors itemized statements of services rendered, the doctor has cooperated with the association. The Court further finds that there is no combination or conspiracy or concert of action of the defendants or the doctors of Oregon to refuse to render such itemized statements to patients who may be entitled to reimbursement from such private hospital associations.

47. If some or all the defendants at any time boycotted privately owned hospital associations, the

Court finds that none of the defendants in recent times has boycotted privately owned hospital associations, and that none of the defendants, so far as the evidence or legitimate inferences show, has any intention to boycott privately-owned hospital associations in the future.

48. While the complaint alleged a restraint on hospitals by defendants, no substantial evidence was offered in support thereof, and the Court finds that none of the defendants in any manner restrained hospitals or hospital services or the opportunities of doctors or of patients to obtain hospital services.

49. At no time within recent years has the membership in any medical society been denied to any doctor because of his connection with any private hospital association.

50. The number of physicians and surgeons in the State of Oregon licensed to practice medicine and surgery and also the number of members of Oregon State Medical Society during each of the years from 1936 to 1948, both inclusive, were approximately as follows:

Year	Number of Licensed Physicians & Surgeons	Number of Members of Oregon State Medical Society
1936	1215	742
1937	1253	755
1938	1272	746
1939	1278	774
1940	1343	839
1941	1338	866
1942	1295	906
1943	1097	932
1944	1039	982
1945	1042	1000
1946	1428	1010
1947	1566	1142
1948	1660	1210

51. Columbia County Medical Society knew of no doctors or members of hospital staff not members of their society. Only one or two doctors in Clackamas County have not belonged to the Physicians Association of Clackamas County. All the doctors in Douglas County have been members of the Douglas County Medical Society. With the exception of a couple of doctors whose licenses were taken away, one doctor who resigned, and one doctor not residing in Jackson County, all doctors practicing in the county were members of Jackson County Medical Society. The only doctors practicing within Marion and Polk Counties who have not been members of the defendant society have been doctors employed by the Oregon State Hospital. In 1949 the Multnomah County Medical Society had at least 600 members.

Based upon the foregoing Findings of Fact, the Court enters the following

Conclusions of Law

I

Medical societies have the right to take such steps as to them shall be deemed appropriate for the purpose of upholding the standards of the medical profession. The exercise of this right was the sole purpose and motive of defendant Multnomah County Medical Society in proceedings prior to 1941 for the expulsion of members; and has been the purpose and motive of other acts of defendants herein, as shown by the evidence.

II

Neither individual doctors nor medical societies are, in the absence of contract, under any obligation to assist or cooperate with commercial hospital associations or other organizations contracting for the furnishing of medical care.

III

Defendants are not guilty of any of the charges set forth in the complaint.

IV

In view of the Findings and Conclusions of the Court, it is unnecessary for the Court to pass upon the question whether interstate commerce is involved in the practice of medicine or in the sale of prepaid medical care or in any alleged acts or conduct of any defendants' as alleged in the complaint.

V

A final judgment should be entered in this action dismissing plaintiff's complaint and action with prejudice.

Dated this 3rd day of November, 1950.

CLAUDE MCCOLLOCH,
Judge.